parallel is afforded by the case of *B. Appalasami* [1] which is briefly reported in *Ratanlal* on "The Law of Crimes" (21st edn.), p. 86:—

"Threat to use the process of law for the purpose of enforcing payment of more than is due is illegal and such a threat made with such an object is a threat of injury".

It is equally a threat of injury where money is exacted where none whatever is payable, as where a greater fee is exacted than what is legally due.

The prosecution had, in my view, established *prima facie* case which, if unrebutted, would warrant a conviction.

The defence was a mere denial. The accused said he did not extort or attempt to extort $50 from the couple. He did not threaten them at all. He did not say that he would arrest them if they refused to produce their identity cards. On the facts, a court, acting reasonably, is entitled to conclude that the accused had failed to raise a reasonable doubt as to his guilt. Both the couple vehemently said that the accused exacted the fee, and that was corroborated by P.W.4 who was then in the vicinity of the crime and who heard people talking and asking for money although he could not say who had uttered those words.

The appeal against acquittal is therefore allowed.

Appeal allowed.

SUNDARAM v. CHEW CHOO KHOON

[A.C.J. (Chang Min Tat J.) May 6, 1968]

[Ipoh — Civil Appeal No. 1 of 1968]

Practice and Procedure — Appeal — From statutory body to High Court — Whether by originating motion or notice of motion — R.S.C., 1957, O. 59 r. 13.

Practice and Procedure — English practice — Applicability of — Provision in local rules — R.S.C., 1957, O. 1 r. 2.

On November 16, 1967, the Collector of Land Revenue disallowed an application made by the appellant for the adjournment of a foreclosure action instituted by the respondent until the final disposal of the civil proceedings brought by the appellant against the respondent in the High Court at Ipoh. By notice of motion, the appellant lodged an appeal in the High Court against the decision of the collector. The notice of motion was filed and served on the respondent. The respondent applied to set aside the notice of motion on the ground that an appeal from a statutory body to the High Court should be by way of an originating motion.

Held: (1) the procedure for an appeal from a statutory body to the High Court is laid down in O. 59 r. 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in rule 13(1), such an appeal must be lodged by the originating motion for the following reasons: (i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of section 3 of the Courts Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process: (ii) the deliberate use of 'motion' in O. 59 r. 13(1) in contradistinction to 'notice of motion' in the corresponding English rule — O. 59 r. 38 established that under O. 59 r. 13(1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion;

(2) the defect occasioned by lodging the appeal by way of notice of motion was a mere irregularity curable under O. 70 of the Rules of the Supreme Court. The application to set aside the notice of motion was therefore dismissed but costs were awarded to the respondent/applicant.

Cases referred to:—

(1) *Re Abdul Aziz's Application* [1962] M.L.J. 64.

(2) *Liew Peck Lian & Ors.* v. *The Conservator of Forests, Johore* [1961] M.L.J. 117.

(3) *Oversea-Chinese Banking Corporation Ltd.* v. *The Commissioner of the Federal Capital of Kuala Lumpur* [1963] M.L.J. 294.

(4) *Shell Company of the Federation of Malaya Ltd.* v. *Chairman, Municipal Council* [1961] M.L.J. 141, C.A.

(5) *Yong Yoke Sung & Ors.* v. *Sungei Way Estate* [1965] 2 M.L.J. 229.

CIVIL APPEAL.

N. Sharma for the appellant.

S. N. Leow for the respondent.

Chang Min Tat J.: By notice of motion, an appeal, listed as Civil Appeal No. 1 of 1968, was lodged in the High Court at Ipoh against the decision of the Collector of Land Revenue, Kuala Kangsar, made on 16th November, 1967, and notified to the appellant on 20th November, 1967, in the matter of Kuala Kangsar Foreclosure Application No. 5 of 1966, whereby the Collector of Land Revenue disallowed the application of the chargor for the adjournment of the foreclosure action instituted by the chargee until the final disposal in the High Court of the chargor's action in Ipoh High Court Civil Suit No. 232 of 1967 against the chargee to void the charges for alleged breaches of the Moneylenders Ordinance on the part of the chargee. The notice of motion was filed on the 22nd January, 1968, and served on the solicitor for the respondent. The respondent thereupon applied by notice of motion filed on the 28th February, 1968, to set aside the chargor's notice of motion upon the sole ground that an appeal from a statutory body to the High Court should be by originating motion.

The statutory provision for an appeal from the decision of the Collector of Land Revenue in any enquiry in a chargee's application is section 37 of the National Land Code. The procedure laid down for such an appeal is in Order 59 rule 13(1) of the Rules of the Supreme Court, which reads as follows:—

"13. (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court or to the Supreme Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the court so directs at the hearing, by oral evidence."

The question that arises in this application is the simple one of deciding whether the "motion" referred to in the rule should be strictly an originating motion or whether it could include and should mean a notice of motion.

It is contended on behalf of the appellant that an appeal, being a rehearing, is essentially and factually a continuation of the same judicial process in the courts of the land, so that the one conclusion must be that an appeal does not originate any process in the High Court and, therefore, need not be by originating motion. And it is further submitted that the appellant, by giving notice of motion, was merely following the procedure under Order 58 rule 3 of the *1957 Annual Practice* (pages 1243 and 1246-1247 of the *White Book*), the justification for so following the English practice being Order 1 rule 2 of the Rules of the Supreme Court, which provides that:—

> "All proceedings other than actions and all applications in the High Court or the Court of Appeal may, subject to those rules, be taken and made in the same manner as the like proceeding or application would be taken or made in the High Court of Justice or in the Court of Appeal in England, as the case may be."

However, Order 58, both in the *White Book* and in the Rules of the Supreme Court, refers to appeals from the High Court to the Court of Appeal or, as it is now known in Malaya, to the Federal Court. I am in considerable doubt as to the correctness of adopting a procedure laid down for an appeal from the High Court to the Federal Court to an appeal from a statutory body to the High Court. In any event, Order 58 rule 3 in the *White Book* has been specifically omitted from our local Rules of the Supreme Court, and any doubt in my mind must now be resolved into certainty that it is not correct to rely on the practice as outlined in the *White Book* under this particular rule. Furthermore, Order 1 rule 2 of the Rules of the Supreme Court comes into use, as I read it, only where the local rules do not provide. In *Re Abdul Aziz's Application*,[1] it was held that in the absence of any existing local provision relating to criminal contempt, the practice procedure and form in force in England became applicable. This was a decision of the Singapore courts, and, with respect, I am in entire agreement with it. In the matter of appeals to the High Court, it cannot be said that there is no local rule since Order 59 of the Rules of the Supreme Court specifically provides for the practice procedure and forms for appeals to the High Court from subordinate courts and statutory bodies.

The answer, therefore, to the problems posed in this case is not to look for and adopt the procedure in England, having regard to the existence of local provisions in the Rules, but to construe the word "motion" in Order 59 rule 13(1). And, to my mind, the answer lies in the fact that a statutory body vested with certain judicial functions and powers as, for example, a Collector of Land Revenue sitting in an enquiry on a chargee's foreclosure application, is not a subordinate court within the scope and meaning of section 3 of the Courts Ordinance No. 43 of 1948. In my view, it cannot, therefore, be said that an appeal from a decision of any such statutory body, where allowed by statute, is a continuation of judicial process in the sense that an appeal from a subordinate court to the High Court, or from the High Court to the Federal Court is, though the process of an appeal from a statutory body is, by its nature, a review of the proceedings therein and, therefore, of the nature of a rehearing. For this reason, Order 59 of the Rules of the Supreme Court relating to appeals from subordinate courts and statutory bodies specifically provides forms for a memorandum of appeal and notice of cross appeals from subordinate courts but not for appeals from statutory bodies. All that Order 59 rule 13, which particularly refers to appeals from statutory bodies, provides is that such appeals shall be made to the High Court by motion. Such applications cannot, therefore, be said to be a continuation of process. They cannot, consequently, be by notice of motion. In my view, they must be made by originating motion.

It is noted that in Order 59 rule 38 in the *White Book*, the English equivalent for our Order 59 rule 13, the appeal from certain statutory bodies was specifically prescribed to be by way of a notice of motion. In our local rules, the provision is for a motion. I think the plain and obvious meanings must be given to the words used in the legislation, unless it can be shown by accepted canons of interpretation that the Legislature means otherwise, and effect must be given to the deliberate use of "motion" in contradistinction to "notice of motion." This comparison, in my view, establishes that under Order 59 rule 13(1) of our local Rules of the Supreme Court, an appeal from a statutory body is an application to the High Court for a review of the order of the statutory body and must be lodged by an originating motion. To hold otherwise would be for me to amend the legislation or to introduce into the rules words which the Legislature had not included, and that would be clearly wrong on my part to do.

I am greatly obliged to learned counsel for the respondent for drawing my attention to the several reported cases, which show that the appeals from statutory bodies had been lodged by originating motions. They are (1) *Liew Peck Lian & Ors.* v. *The Conservator of Forests, Johore*,[2] (2) *Oversea-Chinese Banking Corporation Ltd.* v. *The Commissioner of the Federal Capital of Kuala Lumpur*,[3] and (3) *Shell Company of the Federation of Malaya, Ltd.* v. *Chairman, Municipal Council*,[4] which last case, as confirmed by the solicitors for the appellants who,

fortuitously, were present in court, was in point of fact made by way of an originating motion, though the judgment therein referred to a notice of motion. Such cases went against the contention of learned counsel for the appellant, and in citing them to the court, learned counsel was acting in the very best traditions of advocacy.

It is, however, submitted that in *Yong Yoke Sung & Ors.* v. *Sungei Way Estate,*[5] the appeal from the decision of the Assistant Commissioner for Labour to the High Court was lodged by notice of motion. That may be so. The objection taken here was not made in that case and, in any event, to follow a precedent, which is obviously wrong, is no way of construing an ordinance or interpreting the rules.

The objection, therefore, succeeds but in all the circumstances of the case, I am of the opinion that the defect is not such as to render the proceedings a nullity and is merely an irregularity curable under Order 70 of the Rules of the Supreme Court. An appeal has been lodged against the decision of the Collector of Land Revenue, Kuala Kangsar, and notice of it had been served on the respondent as required under Order 59 rule 13(3) of the Rules of the Supreme Court. The defect occasioned by making the appeal by notice of motion and not by originating motion does not and cannot occasion any prejudice to the applicant herein which cannot be compensated by costs and, therefore, can be cured by amendments so that substantial justice might be done between the parties.

The applicant will have the costs of the application.

Order accordingly.

RENGASAMY PILLAI v. COMPTROLLER OF INCOME TAX

[F.C. (Barakbah L.P., Ismail Khan Ag. C.J. (Malaya) & Suffian F.J.) May 13, 1968]

[Penang — Federal Court Civil Appeal No. X87 of 1967]

Bankruptcy — Bankruptcy notice specifying sum more than that was due — Dispute as to amount specified in notice — Notice not required to comply with s. 7(1) of the Courts of Judicature Act, 1964 — Bankruptcy Ordinance, 1959, s. 3(2).

Income Tax — Recovery of — Penalty under s. 84 (1) Income Tax Ordinance, 1947 — Demand note — Whether to be served on judgment debtor.

On July 3, 1964, the Comptroller of Income Tax obtained judgment against the appellant in the sum of $309,660, being the amount of tax due from him, and 5% penalty imposed by virtue of the provision in section 84(1) of the Income Tax Ordinance, 1947. After the judgment, the appellant's objection to the assessed tax came before the Board of Review. By agreement the tax payable was reduced by $191,839.20. The sum was further reduced by payments made by the appellant. In 1967, the appellant received a bankruptcy notice dated August 17th. The amount of tax payable at that date was $50,240.45. The notice specified the amount of $54,826.68 owing from the appellant — the excess being the penalty under section 84(1) of the Income Tax Ordinance.

Within the time specified in section 3(2) of the Bankruptcy Ordinance, 1959, the appellant gave notice disputing the validity of the notice. Two objections were raised to the notice:— (1) the sum specified in the notice exceeded the amount actually due, as the comptroller was not entitled to impose the penalty under section 84(1)(a) of the Income Tax Ordinance without the prior service of a demand note as required by section 84(1)(b) of the Ordinance; (2) the notice was not issued and expressed to be issued by the Chief Justice of the High Court in the name of the Yang di-Pertuan Agong, as required by section 7(1) of the Courts of Judicature Act, 1964.

Held, the appellant's objections failed for the following reasons: (1) section 84(1)(b) of the Income Tax Ordinance requires the demand note to be served only when a person has been assessed to tax for the first time. It does not require the comptroller to serve a demand note on a judgment debtor like the appellant, before the penalty could be added to the tax payable. The amount specified in the bankruptcy notice was therefore the amount actually due from the appellant; (2) a bankruptcy notice, to be valid, need only comply with section 3(2) of the Bankruptcy Ordinance, 1959. It need not be issued and expressed to be issued by the Chief Justice in the name of the Yang di-Pertuan Agong.

Case referred to:—

(1) *Re Arunachalam, ex parte Indian Overseas Bank Ltd.* [1968] 1 M.L.J. 89.

FEDERAL COURT.

Jagjit Singh for the appellant.

Nik Saghir for the respondent.

Suffian F.J.: The Comptroller of Income Tax (respondent) served a notice of assessment on the appellant. The appellant did not pay the tax which the notice said he should pay. He appealed against the amount assessed. This, of course, did not affect his liability to pay; section 82 of the Income Tax Ordinance, 1947, provided that notwithstanding the appeal, the appellant must nevertheless pay within one month. Without this provision, every tax-payer could object and postpone paying for years until the courts have decided the matter disputed.

The appellant did not pay within one month. So the comptroller sued him. On 3rd July, 1964, he obtained judgment (in Penang High Court Civil Suit No. 113 of 1963) against the appellant in the sum of $309,660. This judgment was obtained under sections 82 and 86. The sum included $14,745.68 being 5% penalty under section 84(1) on tax unpaid within one month.

Section 84 provided:—

"(1) Subject to the provisions of sub-section (3) of this section, if any tax is not paid within the periods prescribed in section 82 of this Ordinance:—

(a) a sum equal to five per centum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;